

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

11 TODD SHARP and MARIA SHARP, ) Case No.: 14-CV-00831-LHK  
12 individuals, )  
13 Plaintiffs, ) ORDER GRANTING DEFENDANTS'  
14 v. ) MOTION TO DISMISS WITHOUT  
15 NATIONSTAR MORTGAGE, LLC, an ) LEAVE TO AMEND  
16 unknown business entity; AURORA )  
17 COMMERCIAL CORP., an unknown business )  
18 entity; and DOES 1 through 25, inclusive, )  
Defendants. )  
\_\_\_\_\_  
19

20 Plaintiffs Todd Sharp and Maria Sharp ("Plaintiffs") allege that Defendants Nationstar  
21 Mortgage, LLC ("Nationstar") and Aurora Commercial Corp. ("Aurora") (collectively,  
22 "Defendants") engaged in predatory lending practices to Plaintiffs' detriment. Before the Court is  
23 Defendants' Motion to Dismiss. ECF No. 21 ("Mot."). Having considered the submissions of the  
24 parties, the relevant law, and the record in this case, the Court GRANTS Defendants' Motion to  
Dismiss without leave to amend.

25 **I. BACKGROUND**

26 **A. Factual Background**

27 On or around September 27, 2006, Plaintiffs took out a \$997,500.00 loan from Blue Adobe  
28 Financial Services, Inc. secured by a deed of trust against real property located at 25011 Hidden

1 Mesa Court, Monterey, California 93940 (the “Property”). ECF No. 18, Third Amended  
2 Complaint (“TAC”) ¶¶ 1, 13-14.

### 3 1. Foreclosure Timeline

4 Due to Plaintiffs’ failure to stay current on the loan, Cal-Western Reconveyance recorded a  
5 notice of default on June 17, 2009. TAC ¶¶ 18-19. On November 15, 2010, the deed of trust was  
6 assigned to Aurora. ECF No. 22-5. After Plaintiffs failed to cure the delinquency, a notice of  
7 trustee’s sale was recorded on December 15, 2010, setting a sale date of January 4, 2011. ECF No.  
8 22-4. The sale did not proceed, however, and on June 28, 2012, Aurora assigned the deed of trust  
9 to Nationstar. ECF No. 22-6; TAC ¶ 38.

10 A second notice of trustee’s sale was recorded on December 18, 2012, setting a sale date of  
11 January 15, 2013. ECF No. 22-7. The Property was eventually sold at public auction on March 5,  
12 2013, at which time it reverted to Nationstar. ECF No. 22-8.

13 After purchasing the Property, Nationstar filed an unlawful detainer action against Plaintiffs  
14 in Monterey County Superior Court on March 28, 2013. ECF No. 22-9; TAC ¶ 42. On July 2,  
15 2013, the state court entered judgment against Plaintiffs and in favor of Nationstar, and issued a  
16 writ of possession. ECF No. 22-10; ECF No. 22-11.

### 17 2. Plaintiffs’ Allegations

18 Plaintiffs allege that sometime prior to February 2009 Plaintiffs contacted Aurora and  
19 requested an alternative to foreclosure. TAC ¶¶ 24. On February 17, 2009, following a series of  
20 “workout agreements” written on Aurora letterhead, Plaintiffs began making payments to Aurora  
21 to avoid foreclosure and to help Plaintiffs earn the right to refinance. *Id.* ¶¶ 26-27. Plaintiffs allege  
22 that these written agreements were intended as foreclosure prevention alternatives. *Id.* ¶ 31.  
23 Plaintiffs allege further that in return for these payments, Aurora promised to modify Plaintiffs’  
24 loan. *Id.* ¶ 32.

25 On November 24, 2010, Aurora returned Plaintiffs’ most recent payment, notifying  
26 Plaintiffs that their payment did not make the loan current, that Plaintiffs had no arrangement with  
27 Aurora to bring the loan current, and that the loan would be referred to foreclosure as a result.  
28 TAC ¶ 33.

1       On this basis, Plaintiffs assert six causes of action against Defendants: (1) intentional  
2 misrepresentation; (2) negligent misrepresentation; (3) breach of contract; (4) breach of the implied  
3 covenant of good faith and fair dealing; (5) promissory estoppel; and (6) negligence. TAC ¶¶ 59-  
4 75, 91-121. Plaintiffs bring two additional causes of action against Aurora only concerning the  
5 foreclosure postponement payments: (1) conversion; and (2) embezzlement. *Id.* ¶¶ 76-90.

6                   **3. Plaintiffs' Bankruptcy Petitions**

7       Plaintiffs have collectively submitted four bankruptcy petitions and received a series of  
8 automatic stays from any act to obtain possession of property of the estate until the time of  
9 dismissal or discharge of the bankruptcy proceedings. *See, e.g.*, ECF No. 22-25 at 7 (noting that  
10 the court lifted the automatic stay in Todd Sharp's bankruptcy proceeding on December 18, 2013).

11       On July 24, 2013, a bankruptcy petition was filed on behalf of Todd Sharp in the Northern  
12 District of California. ECF No. 22-12. According to Plaintiffs, this "inadequate and incomplete"  
13 petition was filed by Gregory Lowe ("Lowe"), an attorney with Capital Law. TAC ¶¶ 50-51.

14       Plaintiffs allege that a company known as "Help U Stay" filed three additional  
15 bankruptcies, all in the Central District of California, on behalf of Maria Sharp. TAC ¶¶ 52-53.  
16 The first petition was filed on July 23, 2013, ECF No. 22-15; the second on October 7, 2013, ECF  
17 No. 22-18; and the third on February 3, 2014, ECF No. 22-21.

18       None of the four bankruptcy petitions disclosed Plaintiffs' claims against Nationstar and  
19 Aurora. *See* ECF No. 22-12 at 12 (Todd Sharp listing no "counterclaims of the debtor"); ECF No.  
20 22-15 at 16 (Maria Sharp listing no "counterclaims of the debtor"); ECF No. 22-18 at 16 (same);  
21 ECF No. 22-21 at 14 (same). All four bankruptcies were ultimately dismissed for Plaintiffs' failure  
22 to appear or to file required documents. *See* ECF No. 22-14; ECF No. 22-17; ECF No. 22-20; ECF  
23 No. 22-23. After her third bankruptcy petition was dismissed on March 20, 2014, Maria Sharp was  
24 "prohibited from filing any new bankruptcy petition within 180 days of th[at] date." ECF No. 22-  
25 23 at 2.

26                   **B. Procedural History**

27       On January 6, 2014, Plaintiffs filed their original complaint in Monterey County Superior  
28 Court. ECF No. 1. On January 22, 2014, Plaintiffs filed a First Amended Complaint ("FAC"). *Id.*

1 On February 25, 2014, Defendants removed the case to this Court. *Id.* Defendants moved to  
2 dismiss Plaintiffs' FAC on March 4, 2014. ECF No. 5. Rather than respond to Defendants'  
3 motion, Plaintiffs filed a Second Amended Complaint ("SAC") on March 28, 2014, ECF No. 8,  
4 which mooted Defendants' motion, *see* ECF No. 16 at 3 n.1.

5 On April 8, 2014, Defendants moved to dismiss Plaintiffs' SAC. ECF No. 11. Plaintiffs  
6 opposed the motion on April 22, 2014, ECF No. 12, and Defendants replied on April 29, 2014,  
7 ECF No. 13. On September 3, 2014, the Court granted Defendants' motion, concluding that  
8 Plaintiffs were "judicially estopped from pursuing their claims in this case" because "none of  
9 [Plaintiffs'] four bankruptcy petitions, all of which were filed after March 2013, disclosed any  
10 claims against Nationstar or Aurora." ECF No. 16 at 8-9. Although the Court was "doubtful that  
11 [Plaintiffs] will be able to plead facts sufficient to avoid the application of judicial estoppel in an  
12 amended pleading," the Court granted leave to amend in case Plaintiffs could "plead facts to  
13 establish that the failure to disclose claims against Defendants in [Plaintiffs'] bankruptcy petitions  
14 resulted from inadvertence or mistake." *Id.* at 11.

15 Plaintiffs filed their TAC on September 24, 2014, and Defendants filed the instant Motion  
16 to Dismiss on October 17, 2014. In connection with this motion, Defendants have also filed a  
17 request for judicial notice. ECF No. 22. Plaintiffs filed their Opposition to the instant motion on  
18 October 31, 2014. ECF No. 24 ("Opp."). Defendants filed their Reply on November 7, 2014.  
19 ECF No. 25.

## 20 **II. LEGAL STANDARDS**

### 21 **A. Motion to Dismiss**

22 Rule 8(a)(2) of the Federal Rules of Civil Procedure requires a complaint to include "a  
23 short and plain statement of the claim showing that the pleader is entitled to relief." A complaint  
24 that fails to meet this standard may be dismissed pursuant to Rule 12(b)(6). The Supreme Court  
25 has held that Rule 8(a) requires a plaintiff to plead "enough facts to state a claim to relief that is  
26 plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial  
27 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable  
28 inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662,

1 678 (2009). “The plausibility standard is not akin to a probability requirement, but it asks for more  
2 than a sheer possibility that a defendant has acted unlawfully.” *Id.* (internal quotation marks  
3 omitted). For purposes of ruling on a Rule 12(b)(6) motion, the Court “accept[s] factual  
4 allegations in the complaint as true and construe[s] the pleadings in the light most favorable to the  
5 nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir.  
6 2008).

7 The Court, however, need not accept as true allegations contradicted by judicially  
8 noticeable facts, *see Shwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000), and it “may look  
9 beyond the plaintiff’s complaint to matters of public record” without converting the Rule 12(b)(6)  
10 motion into a motion for summary judgment, *Shaw v. Hahn*, 56 F.3d 1128, 1129 n.1 (9th Cir.  
11 1995). Nor must the Court “assume the truth of legal conclusions merely because they are cast in  
12 the form of factual allegations.” *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (per  
13 curiam) (internal quotation marks omitted). Mere “conclusory allegations of law and unwarranted  
14 inferences are insufficient to defeat a motion to dismiss.” *Adams v. Johnson*, 355 F.3d 1179, 1183  
15 (9th Cir. 2004).

16 **B. Request for Judicial Notice**

17 The Court generally may not look beyond the four corners of a complaint in ruling on a  
18 Rule 12(b)(6) motion, with the exception of documents incorporated into the complaint by  
19 reference, and any relevant matters subject to judicial notice. *See Swartz v. KPMG LLP*, 476 F.3d  
20 756, 763 (9th Cir. 2007); *Lee v. City of L.A.*, 250 F.3d 668, 688-89 (9th Cir. 2001). Under the  
21 doctrine of incorporation by reference, the Court may consider on a Rule 12(b)(6) motion not only  
22 documents attached to the complaint, but also documents whose contents are alleged therein,  
23 provided the complaint “necessarily relies” on the documents or contents thereof, and the  
24 documents’ authenticity and relevance are uncontested. *Coto Settlement v. Eisenberg*, 593 F.3d  
25 1031, 1038 (9th Cir. 2010); *accord Lee*, 250 F.3d at 688-89. The purpose of this rule is to “prevent  
26 plaintiffs from surviving a Rule 12(b)(6) motion by deliberately omitting documents upon which  
27 their claims are based.” *Swartz*, 476 F.3d at 763 (alterations and internal quotation marks omitted).

1           The Court also may take judicial notice of matters that are either (1) generally known  
2 within the trial court's territorial jurisdiction or (2) capable of accurate and ready determination by  
3 resort to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b). Proper  
4 subjects of judicial notice when ruling on a motion to dismiss include legislative history reports,  
5 *see Anderson v. Holder*, 673 F.3d 1089, 1094 n.1 (9th Cir. 2012); court documents already in the  
6 public record and documents filed in other courts, *see Holder v. Holder*, 305 F.3d 854, 866 (9th  
7 Cir. 2002); and publicly accessible websites, *see Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992,  
8 998-99 (9th Cir. 2010).

9           **C.     Leave to Amend**

10           If the Court determines that the complaint should be dismissed, it must then decide whether  
11 to grant leave to amend. Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend  
12 "shall be freely given when justice so requires," bearing in mind "the underlying purpose of Rule  
13 15 to facilitate decisions on the merits, rather than on the pleadings or technicalities." *Lopez v.*  
14 *Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (alterations and internal quotation marks  
15 omitted). When dismissing a complaint for failure to state a claim, "a district court should grant  
16 leave to amend even if no request to amend the pleading was made, unless it determines that the  
17 pleading could not possibly be cured by the allegation of other facts." *Id.* at 1130 (internal  
18 quotation marks omitted). Accordingly, leave to amend generally shall be denied only if allowing  
19 amendment would unduly prejudice the opposing party, cause undue delay, or be futile, or if the  
20 moving party has acted in bad faith. *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 532  
21 (9th Cir. 2008).

22           **III.    DISCUSSION**

23           Defendants make a series of arguments in support of their Motion to Dismiss. First,  
24 Defendants argue that the doctrine of collateral estoppel bars Plaintiffs' claims because the state  
25 court unlawful detainer judgment secured against Plaintiffs conclusively negates the claims  
26 asserted in the TAC, that judgment was final, and Plaintiffs were parties to the unlawful detainer  
27 action. Mot. at 5-7. Second, Defendants contend that Plaintiffs are judicially estopped from  
28 pursuing their claims. *Id.* at 7-9. Specifically, Defendants assert that Plaintiffs failed to disclose

1 any causes of action against Nationstar and Aurora on their bankruptcy petitions, and thus are  
2 estopped from pursuing the instant litigation. *Id.* Lastly, Defendants variously argue that  
3 Plaintiffs' claims are time-barred, insufficiently pleaded, or otherwise fail as a matter of law. *Id.* at  
4 9-16.

5 For the reasons explained below, the Court concludes that Plaintiffs are judicially estopped  
6 from pursuing this action. Accordingly, the Court need not reach Defendants' remaining  
7 arguments in favor of dismissal.

8 **A. Judicial Notice**

9 "Even if a document is not attached to a complaint, it may be incorporated by reference into  
10 a complaint if the plaintiff refers extensively to the document or the document forms the basis of  
11 the plaintiff's claim." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). "The defendant  
12 may offer such a document, and the district court may treat such a document as part of the  
13 complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under  
14 Rule 12(b)(6)." *Id.*

15 Here, several of Plaintiffs' claims for relief depend upon information contained in their  
16 deeds of trust, the substitutions of trustee, the notice of default, the trustee's deeds upon sale, and  
17 Plaintiffs' four bankruptcy petitions. Moreover, the documents relating to Plaintiffs' bankruptcy  
18 proceedings and orders entered in state court are judicially noticeable because they are matters of  
19 public record. *See Holder*, 305 F.3d at 866. Accordingly, the Court GRANTS Defendants' request  
20 for judicial notice. *See Hayes v. Wells Fargo Bank, N.A.*, No. 3:13-CV-0420 KAW, 2013 WL  
21 4117050, at \*3-4 (N.D. Cal. Aug. 12, 2013) (taking judicial notice of similar documents).

22 **B. Judicial Estoppel**

23 Judicial estoppel is an equitable doctrine, invoked by a court at its discretion, which  
24 precludes a party from gaining an advantage by asserting one position and subsequently taking a  
25 clearly inconsistent position. *See Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9th  
26 Cir. 2001). The doctrine applies to prevent a party from asserting inconsistent positions in  
27 different cases, as well as in a single litigation. *Id.* at 783. The Supreme Court has identified three  
28 factors that courts may consider in determining whether to apply the doctrine of judicial estoppel:

1 (1) whether a party's position is "clearly inconsistent" with its earlier position; (2) whether the first  
2 court accepted the party's earlier position; and (3) whether the party seeking to assert an  
3 inconsistent position would derive an unfair advantage if not estopped. *New Hampshire v. Maine*,  
4 532 U.S. 742, 750-51 (2001). "In addition to these factors, the Ninth Circuit examines whether the  
5 party to be estopped acted inadvertently or with any degree of intent." *Milton H. Greene Archives,*  
6 *Inc. v. CMG Worldwide, Inc.*, 568 F. Supp. 2d 1152, 1164 (C.D. Cal. 2008) (internal quotation  
7 marks omitted). "If incompatible positions are based not on chicanery, but only on inadvertence or  
8 mistake, judicial estoppel does not apply." *Johnson v. Or. Dep't of Human Res.*, 141 F.3d 1361,  
9 1369 (9th Cir. 1998).

10 "In the bankruptcy context, the federal courts have developed a basic default rule: If a  
11 plaintiff-debtor omits a pending (or soon-to-be-filed) lawsuit from the bankruptcy schedules and  
12 obtains a discharge (or plan confirmation), judicial estoppel bars the action." *Ah Quin v. Cnty. of*  
13 *Kauai Dep't of Transp.*, 733 F.3d 267, 271 (9th Cir. 2013). The application of judicial estoppel in  
14 the bankruptcy setting is important "to protect the integrity of the bankruptcy process," for "[t]he  
15 debtor, once he institutes the bankruptcy process, disrupts the flow of commerce and obtains a stay  
16 and the benefits derived by listing all his assets." *Hamilton*, 270 F.3d at 785 (emphasis added).  
17 Further, because the Bankruptcy Code subjects debtors to a continuing duty to disclose all pending  
18 and potential claims, *see* 11 U.S.C. § 521(a)(1), judicial estoppel bars a plaintiff from pursuing a  
19 claim that the plaintiff failed to disclose in his bankruptcy proceeding even when the claim arose  
20 after the bankruptcy petition was initially filed, *see Hamilton*, 270 F.3d at 785. Indeed, "[j]udicial  
21 estoppel will be imposed when the debtor has knowledge of enough facts to know that a potential  
22 cause of action exists during the pendency of the bankruptcy, but fails to amend his schedules or  
23 disclosure statements to identify the cause of action as a contingent asset." *Id.* at 784; *see also Ah*  
24 *Quin*, 733 F.3d at 272-73 (applying "a presumption of deliberate manipulation" where "a plaintiff-  
25 debtor has *not* reopened bankruptcy proceedings" and "filed amended bankruptcy schedules that  
26 properly listed this claim as an asset").

27 In this case, the facts and events upon which Plaintiffs base their claims occurred between  
28 February 17, 2009, when Plaintiffs began to make foreclosure postponement payments to Aurora,

1 and March 28, 2013, when Nationstar filed an unlawful detainer action in state court to obtain  
2 ownership of the property. TAC ¶¶ 24-42. Thus, Plaintiffs had “knowledge of enough facts to  
3 know [of] a potential cause of action” against Defendants by the end of March 2013 at the latest.  
4 *Hamilton*, 270 F.3d at 784.

5 Despite being on notice of the existence of facts that purportedly support a cause of action  
6 against Defendants, none of Plaintiffs’ four bankruptcy petitions, all of which were filed after  
7 March 2013, disclosed any claims against Nationstar or Aurora. *See* ECF No. 22-12 at 12; ECF  
8 No. 22-15 at 16; ECF No. 22-18 at 16; ECF No. 22-21 at 14. In fact, Maria Sharp’s third  
9 bankruptcy petition was filed after the initiation of this lawsuit.<sup>1</sup> *Compare* ECF No. 1 at 2 (noting  
10 that Plaintiffs filed their original complaint on January 6, 2014), *with* ECF No. 22-21 at 2 (noting  
11 that Maria Sharp filed her third bankruptcy petition on February 3, 2014).

12 Weighing the factors that govern the application of judicial estoppel, the Court finds once  
13 again that Plaintiffs are judicially estopped from pursuing their claims in this case. First, by failing  
14 to list claims against Aurora and Nationstar in their bankruptcy petitions, Plaintiffs have asserted  
15 “clearly inconsistent” positions across cases. *See Hamilton*, 270 F.3d at 784 (“[Plaintiff] clearly  
16 asserted inconsistent positions. He failed to list his claims against [defendant] as assets on his  
17 bankruptcy schedules, and then later sued [defendant] on the same claims.”). Plaintiffs concede as  
18 much. *See* Opp. at 8 (“The inconsistency here is that in Todd Sharp’s bankruptcy he did not  
19 disclose the misconduct of Aurora or Nationstar. The subsequent bankruptcies . . . also failed to  
20 mention these claims.”).

21 Second, the bankruptcy courts “accepted” Plaintiffs’ position and granted them the benefit  
22 of four automatic stays pursuant to 11 U.S.C. § 362. *See Hamilton*, 270 F.3d at 784-85 (“Our  
23 holding does not imply that the bankruptcy court must actually discharge debts before the judicial  
24 acceptance prong may be satisfied. The bankruptcy court may ‘accept’ the debtor’s assertions by  
25 relying on the debtor’s nondisclosure of potential claims in many other ways. . . . [Plaintiff] did

26  
27 <sup>1</sup> Plaintiffs received the benefit of an automatic stay pursuant to 11 U.S.C. § 362 upon filing  
28 each of their petitions. Each petition was subsequently dismissed. *See* ECF No. 22-14; ECF No.  
22-17; ECF No. 22-20; ECF No. 22-23.

1 enjoy the benefit of [] an automatic stay . . . ."); *see also Swendsen v. Ocwen Loan Servicing, LLC*,  
2 No. 13-2082, 2014 WL 1155794, at \*5-6 (E.D. Cal. Mar. 21, 2014) (automatic bankruptcy stay is  
3 sufficient to meet judicial acceptance prong); *HPG Corp. v. Aurora Loan Servs., LLC*, 436 B.R.  
4 569, 578 (E.D. Cal 2010) (same). Plaintiffs do not disagree. *See* Opp. at 8.

5 Lastly, as to unfair advantage, Plaintiffs' repeated failure to disclose their claims against  
6 defendants deceived the bankruptcy court and thus undermined the integrity of the bankruptcy  
7 process. *See Hamilton*, 270 F.3d at 784-85; *see also Swendsen*, 2014 WL 1155794, at \*6 ("The  
8 law in this area is clear: a plaintiff who has received the benefit of an automatic stay under 11  
9 U.S.C. § 362(a) would receive an unfair advantage by prosecuting claims against a defendant after  
10 failing to disclose those claims in his bankruptcy proceedings.").

11 In response, Plaintiffs advance a variant of the "inadvertence or mistake" defense to judicial  
12 estoppel: they attempt to shift the blame to other parties. *See Ah Quin*, 733 F.3d at 271-78. "[I]t  
13 was not," Plaintiffs argue "the chicanery, misrepresentation, mistake or inadvertence of the  
14 Plaintiffs which resulted in the claims being absent from their bankruptcy schedules." Opp. at 9  
15 (emphasis added). "Rather, it was the fault of Gregory Lowe and later Help U Stay," Plaintiffs  
16 contend. *Id.* With respect to Todd Sharp's bankruptcy filing of July 24, 2013, Plaintiffs allege that  
17 Lowe, an attorney with Capital Law, filed an "inadequate and incomplete" petition on Todd  
18 Sharp's behalf. TAC ¶ 50. As evidence of counsel's malpractice, Plaintiffs allege further that  
19 "Lowe was ordered by the Northern District Bankruptcy Court on December 6, 2013 to return  
20 funds to the[m]." *Id.* ¶ 51; *see also* ECF No. 18-2 at 49. With respect to the three additional  
21 "incomplete" bankruptcy petitions naming Maria Sharp but supposedly filed by Help U Stay,  
22 including the one filed after this lawsuit began, Plaintiffs claim that they "were not informed of  
23 these ban[k]ruptcies." TAC ¶ 53.

24 The Court is not convinced. To begin, the Court notes that in Plaintiffs' opposition to  
25 Defendants' initial motion to dismiss, Plaintiffs claimed that their repeated failure to disclose their  
26 claims against Defendants was an "unintentional mistake[]" resulting from "not having adequate  
27 representation." ECF No. 12 at 6. Plaintiffs, thus, have changed their tune. In addition, the  
28 judicially noticeable record indicates that Plaintiffs have engaged in a pattern of filing skeletal

1 bankruptcies (or having others file such bankruptcies on their behalf), obtaining an automatic stay,  
2 and then failing to appear at the scheduled meeting of creditors or failing to file required  
3 documents. *See* ECF No. 22-14; ECF No. 22-17; ECF No. 22-20; ECF No. 22-23. In fact, after  
4 her third bankruptcy petition was dismissed on March 20, 2014, Maria Sharp was “prohibited from  
5 filing any new bankruptcy petition within 180 days of th[at] date.” ECF No. 22-23 at 2. Plaintiffs’  
6 allegation that a third party was filing rogue petitions naming Maria Sharp is simply not credible.  
7 Importantly, Plaintiffs do not allege that they ever corrected any of the four bankruptcy filings to  
8 include their claims against Defendants. *See Ah Quin*, 733 F.3d at 272 (“A key factor is that  
9 Plaintiff reopened her bankruptcy proceedings and filed amended bankruptcy schedules that  
10 properly listed this claim as an asset.”). As a result, the Court applies “a presumption of deliberate  
11 manipulation” that Plaintiffs, for the reasons stated, have not overcome. *Id.* at 273.

12 Plaintiffs’ citations to *Just Film, Inc. v. Merchant Services, Inc.*, 873 F. Supp. 2d 1171  
13 (N.D. Cal. 2012), and *Gaudin v. Saxon Mortgage Services, Inc.*, 820 F. Supp. 2d 1051 (N.D. Cal.  
14 2011), are unavailing. In *Just Film*, the court declined to apply judicial estoppel because the  
15 plaintiff-debtor had “told his bankruptcy attorney about this case during the original bankruptcy  
16 proceedings,” but the attorney had “failed to include it in the schedule.” 873 F. Supp. 2d at 1179.  
17 Moreover, the “undisputed evidence” in *Just Film* established that the plaintiff-debtor had “directly  
18 told the trustee about this case at the initial creditors’ meeting” and had “re-opened the case and  
19 remedied his error.” *Id.* Here, by contrast, at least two of Plaintiffs’ bankruptcy petitions were  
20 dismissed for failure to appear at the creditors’ meetings, *see* ECF No. 22-17; ECF No. 22-20, and  
21 Plaintiffs never corrected any of their disclosures. *Gaudin*, on the other hand, does not even  
22 concern the defense of inadvertence or mistake. There, the court found that the defendant had not  
23 “shown how any position Gaudin took in the bankruptcy action is inconsistent with her position  
24 here.” *Gaudin*, 820 F. Supp. 2d at 1053. Here, of course, Plaintiffs concede that they have taken  
25 inconsistent positions in their bankruptcy filings. *See* Opp. at 8. *Gaudin* is therefore inapposite.

26 The Court therefore finds that Plaintiffs have failed to allege facts plausibly suggesting that  
27 their repeated failure to disclose claims against Nationstar and Aurora in Plaintiffs’ bankruptcy  
28 petitions was the result of inadvertence or mistake. Having weighed the relevant factors, the Court

1 concludes in its discretion that Plaintiffs are judicially estopped from pursuing their claims in the  
2 instant lawsuit.

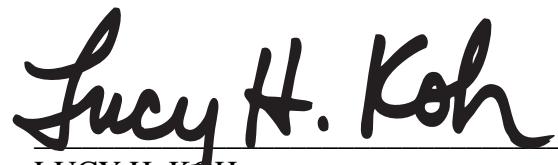
3 **IV. CONCLUSION**

4 For the foregoing reasons, the Court GRANTS Defendants' Motion to Dismiss. Plaintiffs  
5 have had an opportunity to cure the deficiencies identified in the Court's prior order dismissing  
6 Plaintiffs' claims on judicial estoppel grounds, and they have failed to do so. Accordingly, the  
7 Court finds that further amendment would be futile and will not grant leave to amend. *See Mujica*  
8 *v. AirScan Inc.*, 771 F.3d 580, 593 & n.8 (9th Cir. 2014).

9 The Clerk shall close the case file.

10 **IT IS SO ORDERED.**

11  
12 Dated: January 7, 2015  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



LUCY H. KOH  
United States District Judge